IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.1280 of 2003
Date of decision : 12.1.2007

Ganesha and others

....Petitioners

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

...

Present : Mr.N.K.Sanghi, Advocate
for the petitioners.

Mr.S.K.Hooda, Sr.DAG, Haryana.

Mr. Rahul Vats, Advocate
for the complainant.

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MAHESH GROVER, J. (O)

The petitioners have impugned the order dated 8.5.2003 passed by the Addl.Sessions Judge, Bhiwani whereby they have been summoned pursuant to the provisions of Section 319 of the Code of Criminal Procedure to face trial in an offence under Section 302 IPC registered vide FIR No.66 dated 1.4.2001.

According to the FIR lodged at the behest of the complainant, the petitioners were not named. It was the categoric case of the complainant while recording the FIR that he entered the Baithak of Bhagirath from the rear door and saw the hands of Narain, his brother (since deceased) being caught hold of by Jagdish son of Ganesh Ram. Bhagirath was holding a Rapi stained with blood.

Ganesha was also standing there. Narain was stained with blood. On seeing the complainant all the three persons ran away from there. It was noticed that blood was oozing out from the vein of the neck of Narain. On enquiry Narain disclosed that Bhagirath had given him Rapi blow whereas Ganesha and Jagdish caught hold of him. He further disclosed that Bhagirath, Ganesha and Jagdish had been demanding Rs.10,000/- from him which he had taken as loan from Bhagirath for sale of a plot.

Initially the police registered a case under Section 302/34 IPC against the aforestated accused persons, namely Bhagirath, jagdish and Ganesha. Subsequently the matter was investigated by Shri Om Parkash, DSP, Loharu who came to the conclusion that in fact it was a case of suicide as the deceased was unable to pay the amount of Rs.10,000/-, he had cut the vein of his neck with Rapi. The investigating agency found Jagdish to be innocent and the case was converted to a case under Section 306 IPC. Accused Bhagirath was sent to face a trial and a charge under Section 306 IPC was accordingly framed against him.

At this stage it is relevant to note that said Bhagirath stands convicted under the provisions of Section 302 IPC.

During the course of trial the complainant while appearing as PW1 made a statement that when he along with Sadhu Ram reached near the baithak of Bhagirath, he heard noise of his brother Narain as 'Mar Dia, Mar Dia". Front door of the baithak was closed. He and Sadhu Ram entered the house of Bhagirath through another door and they saw that Narain was lying on the cot. Jagdish

and Phoola had caught hold hands of Narain, whereas Ganesha and Surender had caught hold his legs. In their presence accused Bhagirath inflicted injuries with Rapi (an instrument for cutting leather) on the neck of Narain. On raising alarm, accused persons ran away from the spot. Narain was profusely bleeding from neck. Narain told them that accused Bhagirath was demanding Rs.10,000/- and the amount could not be managed by Narain and that is why Narain was summoned by accused Bhagirath, who along with other accused persons in furtherance of their common intention inflicted injuries to his brother Narain.

Apparently the complainant has made a deviation from the version as given by him in the FIR wherein it is recorded that he alone had entered the Baithak of Bhagirath and he saw Jagdish, Ganesha and Bharith in the room. It was got recorded that he had himself seen the occurrence taking place and he had found Narain in that injured state and on enquiry from Narain it was revealed that Ganesha and Jagdish had caught hold of him while Bhagirath had inflicted injuries. In the subsequent statement he has also introduced one another person Sadhu Ram and had stated that the whole occurrence took place in front of his eyes.

The police had initially registered a case under Section 302 IPC but subsequently filed challan under Section 306 IPC against Bhagirath. Jagdish had been discharged. The complainant did not assail that order pertaining to the discharge of Jagdish. The impugned order has been passed pursuant to the provisions of Section 319 Cr.P.C. which is as follows :

"319. *Power to proceed against other persons appearing to be guilty of offence*.-(1) Where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2)Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then -

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause(a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

A perusal of the above shows that the trial court is burdened with a heavy responsibility to ensure at the time of dealing with an application under Section 319 Cr.P.C. that the evidence which

has come on record is quality evidence and not merely an allegation on the basis of which such a summoning can be made. There should be sufficient evidence to suggest involvement and the commission of offence by the persons sought to be summoned.

The Hon'ble Supreme Court in **Rakesh and anr. v. State of Haryana**, 2001(3) RCR (Criminal) 681 has observed that the power under Section 319 Cr.P.C. is to be used sparingly and the word 'evidence' in Section 319(1) Cr.P.C. is to be used comprehensively in a broader sense so as to include the material collected by the investigating officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime.

In the instant case the complainant had vastly deviated from the initial version. The evidence of the complainant was more in the nature of an eye witness and therefore, the prosecution case would have rested very strongly on his evidence. Any improvement or deviation in the evidence of such a witness has to be explained satisfactorily.

Beside Narain, the deceased was in an injured state at that time and according to the complaint Narain had fortified the allegations as made in the FIR.

The Court while dealing with an application under Section 319 Cr.P.C. is not to be swayed by mere allegations that may come in the statements of overzealous witnesses during the course of trial. If the person named suggestively forms a part of chain of events

leading to the commission of an offence, then summoning no doubt is justified but if it merely enlarges the arena of the number of accused because of the misplaced enthusiasm of a complaint to see all, those related to the accused, in the dock, then such a practice needless to say is to be discouraged and the Court does not have to unwittingly become a tool in the story of vendetta unleashed by complainant or any other witness.

For the reasons stated above, the impugned order is set aside and the petition is allowed accordingly.

12.1.2007 (MAHESH GROVER)
JUDGE

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